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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written Statement* submitted by the International Centre for Human Rights and Democratic Development (Rights & Democracy), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

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*/ This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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ENG

Protecting Economic, Social and Cultural Rights in the Global Economy

1. The UN Development Programme estimates that one in five of the world's people – 1.2 billion – lives on less than a dollar a day. 56% of the developing world lacks the most basic sanitation and more than 50 countries have lower per capita incomes today than they did a decade ago. The UN Special Rapporteur on the Right to Food notes that 36 million people died of hunger or hunger-related disease last year alone. 800 million were chronically malnourished.

2. The Vienna Declaration and Programme of Action re-affirmed that "Human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governments". Further, the declaration emphasized the universality, indivisibility, interdependence and interrelationship of all human rights and fundamental freedoms as they are defined by the Universal Declaration of Human Rights (UDHR).

3. The UDHR is governed by two covenants sharing the same preamble. The preamble asserts that the "ideal of human freedom can be realized only if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights".

4. The proliferation of bilateral and multilateral agreements on trade and investment has subjected many areas of domestic social and economic policy to new forms of international regulation and adjudication. These agreements prioritize the rights of private interests by providing dispute resolution mechanisms which include binding decisions and punitive measures for non-compliance. No such protection is guaranteed to citizens or communities when the impacts of trade and investment policy negatively affect the progressive realization of their human rights, including economic, social and cultural rights.

5. Poverty and under-development are both violations of, and obstacles to, the realization of human rights. The increased fragility of economic, social and cultural rights in the context of globalisation is a violation of the Right to Development, described by the Independent Expert as the right to a particular process of development, in which "all human rights and fundamental freedoms can be fully realized". In the context of globalisation, economic policy formulated by the International Financial Institutions, the World Trade Organization and relevant regional bodies, must be consistent with, and supportive of the promotion and protection of human rights.

Justiciability of Economic, Social and Cultural Rights

6. Economic, social and cultural rights are not aspirational goals, matters of generosity, privilege or objectives to be achieved. Health, food, education and housing are human rights not market access opportunities. They are inherent rights as articulated in the *International Bill of Human Rights*. They imply obligations on the part of governments to respect, promote, protect and fulfil these rights.

7. Individuals and communities are entitled to claim their rights through judicial or legislative means when they believe that those rights have been violated. The right to an

effective remedy for the violation of rights is guaranteed in Article 8 of the Universal Declaration of Human Rights which states "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."

8. Article 2 of the International Covenant on Economic, Social and Cultural Rights states that "Each State Party to the present Covenant undertakes to take steps... with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

9. The Limburg Principles on the Implementation of Economic, Social and Cultural Rights (formulated during an international symposium in Maastricht, Netherlands 1986), state that, "Although the full realization of the rights recognized in the Covenant is to be attained progressively, the application of some rights can be made justiciable immediately while other rights can become justiciable over time." The Principles elaborate further, "States parties shall provide for effective remedies including, where appropriate, judicial remedies."

10. Justiciability of Economic, Social and Cultural Rights requires the respect for civil and political rights, including an independent judiciary.

11. Standards on which the adjudication of human rights can be based, are provided within international covenants, treaties, conventions and declarations. Further, the Committee on Economic, Social and Cultural Rights has articulated standards which help to define the content of specific economic, social and cultural rights and set out criteria for their implementation both nationally and internationally. These general comments define the core content of rights, identify violations of specific rights and recommend framework legislation for the implementation for appropriate remedies to the violations of rights.

The Optional Protocol on Economic, Social and Cultural Rights

12. An Optional Protocol to the International Covenant on Economic, Social and Cultural Rights was originally proposed in 1990 to ensure the recognition and implementation of the rights guaranteed in the Covenant. The Protocol will provide a complaints procedure with respect to economic, social and cultural rights, thereby allowing individuals or groups to seek appropriate remedies for violations of their rights under the ICESCR.

13. The Vienna Declaration and Programme of Action (1993) adopted by consensus by 171 States, supports the adoption of an Optional Protocol as a means of redressing the imbalance between rights, clarifying the scope and meaning of provisions in the Covenant and establishing a body of case law to ensure improved compliance with those provisions.

14. Economic, social and cultural rights have been recognized as justiciable in various regional and other human rights treaties, such as the San Salvador Protocol to the American Convention on Human Rights, the Additional Protocol to the European Social

Charter and the African Charter on Human and Peoples' Rights, as well as the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). In addition, many countries have recognized economic, social and cultural rights as justiciable at the domestic level.

15. At its 57th session, the Commission on Human Rights adopted a resolution on the Optional Protocol. The resolution mandated an Independent Expert to examine the draft text circulated in 1996 and to submit his recommendations to the 58th session. The resolution also establishes the possibility of creating a working group to follow-up on these recommendations. The resolution was a positive and welcome step in the global campaign to establish the justiciability of economic, social and cultural rights.

RECOMMENDATIONS

1. The Commission on Human Rights must continue to support and encourage the work of the Sub-Commission on the Protection and Promotion of Human Rights in relation to Globalisation and its impacts on the ability of States to fulfil their obligations under the Covenant on Economic, Social and Cultural Rights. In this regard, adequate human and financial resources should be provided to the Sub-Commission and its rapporteurs on globalisation.

2. The Commission on Human Rights should encourage and facilitate increased collaboration between UN special rapporteurs, UN agencies governing development, food, education and culture and the Committee on Economic, Social and Cultural Rights.

3. The UN Conference on Financing for Development will address the systemic issues related to multi-lateral economic, financial and development assistance agreements. The Office of the High Commissioner for Human Rights should participate fully in this process, encouraging a human rights approach and promoting the primacy of international human rights obligations.

4. States should balance their obligations under the International Covenant on Economic, Social and Cultural Rights with obligations under international trade and investment agreements. The Commission should strengthen its efforts to increase the number of ratifications to the Covenant. States Parties to the Covenant should undertake activities which promote the usefulness of the General Comments prepared by the Committee on Economic, Social and Cultural Rights, acknowledging that they serve as non-binding interpretations of Covenant provisions.

5. The Commission should, as a matter of urgency, create an open-ended working group with a mandate to proceed towards the early adoption of the protocol. The Commission should provide a clear indication of the importance with which it views this initiative by securing adequate funds to enable the working group to conduct its activities in a timely and substantive manner. The Commission should ensure that the working group is provided access to the required technical expertise and administrative support necessary to pursue its mandate to its conclusion.